

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

YVONNE CHANDLER,
on behalf of I.C., a minor,

Plaintiff,

v.

1:14-CV-1363
(GTS/WBC)

COMMISSIONER OF SOCIAL SECURITY

Defendant.

APPEARANCES:

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GLENN T. SUDDABY, Chief United States District Judge

OF COUNSEL:

MICHAEL J. TELFER, ESQ.

SHUBH NIGAM McTAGUE, ESQ.

ROBERT R. SCHRIVER, ESQ.

Currently before the Court, in this Social Security action filed by Yvonne Chandler (“Plaintiff”) on behalf of her daughter, I.C., against the Commissioner of Social Security (“Defendant” or “the Commissioner”) pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), is the Report and Recommendation of United States Magistrate Judge William B. Mitchell Carter, filed

on January 12, 2016, recommending that Plaintiff's motion for judgment on the pleadings be denied, and that Defendant's motion for judgment on the pleadings be granted. (Dkt. No. 18.) For the reasons set forth below, the Report and Recommendation is accepted and adopted.

I. PLAINTIFF'S OBJECTIONS

Generally, Plaintiff makes six arguments in objection to Magistrate Judge Carter's Report and Recommendation. (Dkt. No. 19 at 1-7.) First, Plaintiff argues that Magistrate Judge Carter's recommendation that the ALJ did not err in determining that I.C. did not meet, medically equal, or functionally equal Listing 112.11 for attention deficit hyperactive disorder should be rejected because the ALJ (1) did not refer to the criteria for Listing 112.11 in the step three analysis, and (2) incorrectly assessed I.C.'s degree of limitation in the domain of attending and completing tasks. (*Id.* at 1-3.)

Second, Plaintiff argues that Magistrate Judge Carter's recommendation that the ALJ did not err in weighing the opinion of consultative examiner, Dennis Noia, Ph.D., should be rejected because the ALJ did not identify or explain the specific amount of weight afforded to the opinion of Dr. Noia despite affording less than controlling weight to the opinion of treating physician, Yousuf Ahmad, M.D. (*Id.* at 3-4.)

Third, Plaintiff argues that Magistrate Judge Carter's recommendation that the ALJ properly weighed the joint opinion of treating physician, Dr. Ahmad, and treating therapist, Cheryl Alban, L.C.S.W., should be rejected because the ALJ should have afforded controlling weight to the opinion under the treating physician rule. (*Id.* at 4-5.)

Fourth, Plaintiff argues that Magistrate Judge Carter's recommendation that the ALJ did not err in assessing the opinions of State agency pediatric consultant, D. Bostic, M.D., and State

agency psychologist, M. Marks, should be rejected because the ALJ (1) failed to assign specific weight to the opinions, and (2) should have assigned no weight to the opinions because Dr. Bostic and Dr. Marks did not examine I.C. (*Id.* at 5-6.)

Fifth, Plaintiff argues that Magistrate Judge Carter’s recommendation that the ALJ did not err in affording little weight to the opinion of teacher, J. Salimore, should be rejected because the opinion was consistent with the evidence of record and, therefore, the ALJ should have afforded the opinion greater weight. (*Id.* at 6-7.)

Sixth, and finally, Plaintiff argues that Magistrate Judge Carter’s recommendation that the ALJ properly determined that I.C. did not functionally equal a Listing should be rejected because the ALJ erred in assessing the opinion evidence of record. (*Id.* at 7.)

II. APPLICABLE LEGAL STANDARD

A district court reviewing a magistrate judge’s Report and Recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Parties may raise objections to the magistrate judge’s Report and Recommendation, but they must be “specific written objections,” and must be submitted “[w]ithin 14 days after being served with a copy of the recommended disposition.” Fed. R. Civ. P. 72(b)(2); *accord*, 28 U.S.C. § 636(b)(1)(C). “A judge of the court shall make a de novo determination of those portions of the [Report and Recommendation] . . . to which objection is made.” 28 U.S.C. § 636(b)(1)(C); *accord*, Fed. R. Civ. P. 72(b)(2). “Where, however, an objecting party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error.” *Caldwell v. Crosset*, 9-CV-0576, 2010 WL 2346330, at * 1 (N.D.N.Y. June 9, 2010) (quoting *Farid v. Bouey*, 554 F. Supp. 2d 301, 307 [N.D.N.Y. 2008]) (internal quotation marks omitted).

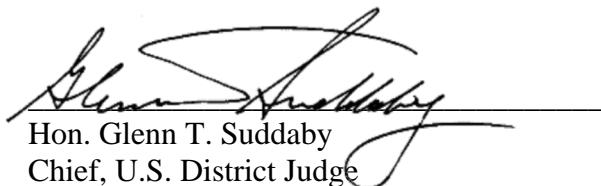
III. ANALYSIS

The Court finds that Plaintiff's objections restate the arguments set forth in Plaintiff's initial brief in this matter." (*Compare* Dkt. No. 12 *with* Dkt. No. 19.) Therefore, the Court reviews the portions of Magistrate Judge Carter's Report and Recommendation addressed in Plaintiff's objections for clear error only. After carefully reviewing the relevant filings in this action, including Magistrate Judge Carter's thorough Report and Recommendation, the Court can find no clear error in the Report and Recommendation. Magistrate Judge Carter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. (Dkt. No. 18.)

ACCORDINGLY, it is

ORDERED that Magistrate Judge Carter's Report and Recommendation (Dkt. No. 18) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further
ORDERED that the Commissioner's determination is **AFFIRMED**; and it is further
ORDERED that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED**.

Dated: February 10, 2016
Syracuse, New York



Hon. Glenn T. Suddaby
Chief, U.S. District Judge